

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:

Case No. 87-06579-KL3-7
Chapter 7

RICHARD WALTER RAJOTTE, aka
Rick Rajotte Ind. & fdba Chemex
Tennessee Center

Debtor

WILLIAM T. CARTER and MARJORIE
CARTER RAJOTTE

Plaintiffs

v.

Adversary Proceeding
No. 399-0200A

RICHARD WALTER RAJOTTE

Defendant

ORDER

The debtor, Mr. Rajotte, has filed a motion asking the court to reconsider or set aside its decision entered on April 18, 2001. The court decided that the tri-party agreement between the debtor, Mr. Rajotte, the plaintiff, Mr. Carter, and Fran Rajotte, another of Mr. Rajotte's creditors, created a post-bankruptcy debt that was not discharged in Mr. Rajotte's bankruptcy. The court also decided that Mr. Carter did not willfully violate the discharge injunction imposed by Bankruptcy Code § 524. 11 U.S.C. § 524(a)(2).

Mr. Rajotte's motion continues arguments made before and during the trial. He contends that the tri-party agreement was an attempt by Mr. Carter to "re-obligate" Mr.

Rajotte on the Chemex debt to Mr. Carter that had been discharged in Mr. Rajotte's bankruptcy. Mr. Rajotte asserts that Mr. Carter took advantage of Mr. Rajotte's bad circumstances and strong-armed Mr. Rajotte into an agreement to pay the discharged debt. The court decided that Mr. Carter had no knowledge of Mr. Rajotte's earlier bankruptcy at the time the tri-party agreement was executed. This disposes of Mr. Rajotte's argument, but another point should be repeated. The court's opinion should have made it clear that the tri-party agreement benefitted Mr. Rajotte more than Mr. Carter. Mr. Carter in effect made a new loan to Mr. Rajotte to resolve his legal problems. The facts provide better support for the view that Mr. Rajotte took advantage of Mr. Carter based on Mr. Carter's lack of knowledge Mr. Rajotte's earlier bankruptcy, which was purposefully concealed from Mr. Carter.

The same reasoning applies to the marital dissolution agreement between Mr. Rajotte and Marge Rajotte. Mr. Carter did not force this on Mr. Rajotte. Mr. Rajotte and Marge Rajotte, Mr. Carter's sister, had successfully concealed Mr. Rajotte's bankruptcy from Mr. Carter. They apparently assumed that, as a result of the concealment, Mr. Rajotte's debt to Mr. Carter was not discharged. Based on this misunderstanding of the law and their desire to continue concealing the bankruptcy, they entered into a marital dissolution agreement that treated Mr. Rajotte as still liable to Mr. Carter on the Chemex debt.

The court concluded that Mr. Carter did not learn of Mr. Rajotte's bankruptcy until after Mr. Carter filed a state court lawsuit to collect the Chemex debt. The filing of the lawsuit could not have been a willful violation of the discharge injunction. The only willful

violation could have been Mr. Carter's failure to dismiss the lawsuit after learning of Mr. Rajotte's bankruptcy. Mr. Rajotte's argument comes down to this: Mr. Carter willfully violated the discharge injunction because his lawyers were slower than they should have been to discover that the Chemex debt had been discharged, and as a result, Mr. Carter allowed the state court suit to remain pending for eight months after learning of Mr. Rajotte's bankruptcy. The court's opinion rejected this argument. Contrary to the argument in Mr. Rajotte's motion, the court did not rely on the theory that the state court lawsuit could have been justified as a suit to collect the new debt created by the tri-party agreement. Thus, Mr. Rajotte's motion says nothing to change the court's mind on the question of whether failure to promptly dismiss the state court lawsuit was a willful violation of the discharge injunction. Accordingly,

It is ORDERED that the motion of the debtor, Richard Walter Rajotte, to reconsider or set aside the court's earlier order is DENIED.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE